1971
REPORTS OF THE LEGISLATIVE RESEARCH COMMISSION
TO THE
NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE ETHICS
and
REPORTING VIOLENT WOUNDS

JANUARY, 1971
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27602

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1971 General Assembly its findings and recommendations concerning Legislative Ethics, and Reporting Violent Wounds.

These reports were initiated by a committee of the Legislative Research Commission on Special Studies. The Committee on Special Studies consisted of:

Senator Edgar J. Gurganus, Chairman

Representative Liston B. Ramsey, Vice Chairman

Senator John R. Boger, Jr.

Representative Dwight W. Quinn

The Legislative Research Commission reviewed the Committee proceedings and adopted these reports November 13, 1970.

Respectfully,

Philip P. Godwin, Speaker Senator N. Hector McGeachy, Jr.

Co-Chairmen, Legislative Research Commission

REPORT OF THE LEGISLATIVE RESEARCH COMMISSION

TO THE 1971 GENERAL ASSEMBLY

LEGISLATIVE ETHICS

Raleigh, North Carolina

November 13, 1970

I

Efforts to improve the ethical quality of State government have long concerned both citizens and government officials. As government continues to exert greater and greater influence upon the citizen, and as government demands greater and greater support from the citizen, this concern intensifies. This concern has manifested itself in various constitutional and statutory provisions which not only define and proscribe obviously dishonest conduct such as bribery but also regulate situations where public officers may find themselves in a position where their private interests may be in conflict with the interests of the public which the officers are supposed to serve.

Although bribery statutes have generally applied to all public officers and employees, including legislators, most conflict-of-interest statutes were, by express language or implicit meaning, limited to officers of the non-legislative branches of government. The last decade has witnessed a dramatic change in this situation. Since 1960 at least 19 states have enacted some form of legislative-ethics statute.

The Legislative Research Commission, aware of the trend toward enactment of legislative-ethics statutes, and also aware of the interest in North Carolina both within and without the General Assembly in developing and promoting the highest standards of ethics for legislators, assigned to its Subcommittee on Special Studies the task of investigating and

reporting to the Commission facts concerning the types of ethics statutes, procedures under the statutes, and the effectiveness of the statutes in achieving the desired results.

The Subcommittee surveyed in detail all of the ethics statutes applying to members of the legislatures of the various states. They found that, although some states had adopted statutes which were quite similar to, and obviously modeled upon, an ethics statute from another state, there was generally far greater diversity among the various statutes than is common when many states begin to adopt legislation on the same subject. The Commission feels that this diversity reflects a lack of firm conviction that any particular statute or type of statute is clearly best suited to produce the desired result. Accordingly, the Commission has examined the question in the light of North Carolina's particular situation, without any preconceived notions as to what kind of statute, if any, is best.

II

At the outset, we wish to make it clear that we are dealing with questions of ethics and not with conduct which is by present statutes and common consent deemed to be criminal in nature. If a legislator accepts a bribe, he is liable under present law to a fine in double the amount of the promised or delivered bribe, to imprisonment for five years, to forfeiture of his legislative seat, and to permanent disqualification to hold any office of honor, trust or

profit under the State. (G.S. 14-219). Enforcement of this law is through the ordinary criminal law process, involving the executive and judicial departments. The Commission believes that existing law and procedure are adequate to deal with this kind of misconduct by legislators. Any attempt to establish legislative machinery to hear and determine charges of bribery and to enforce penalties upon a conviction would probably add nothing to the effectiveness of existing law and might, to the contrary, lead to charges of legislative "whitewashing" of a suspected member.

The most common ethical problem which is dealt with in the various legislative-ethics statutes is that of conflict of interest. Most, and probably all, states have conflict-of-interest statutes which bar public officials from dealing with a contract or purchase for the state and then, as owner or representative of a private business, dealing with the contract or sale from the other side also. These statutes do not ordinarily apply to legislators simply because legislators do not ordinarily execute contracts and make purchases for the State.

The conflict-of-interest problem as it relates to legislators is more subtle. In its most obvious aspect, it arises when a legislative bill affects, either adversely or favorably, a business or activity in which the legislator has some special interest, whether by way of ownership, employment, or other connection. The problem also arises when a legislator appears,

either formally or informally, to represent a client or constituent who is involved before one of the State regulatory agencies which are subject to legislative control.

Conflict-of-interest statutes pose no great problems as they are applied to executive and judicial officers. The statutes generally prohibit these officers from dealing in their official capacity with private persons or firms in which the officer has a special interest. By and large, these statutes appear to have had a salutary effect. When the statutes are applied to legislators, however, serious problems arise immediately.

Executive and judicial officers are, particularly at the state level, normally full-time employees. They are expected to devote their full working energies to the service of the State, and are paid salaries which hopefully make the requirement a reasonable one. Legislators are part-time servants of the State. Despite recent salary increases, they receive only $2400 per year plus an allowance for living expenses while in session, and a $50 per month general expense allowance. Obviously, the legislator must have other sources of income -- generally he must have another job. This means that the legislator, unless the General Assembly is to be composed entirely of the otherwise unemployed, comes to the legislature with ideas and attitudes influenced by his employment background. If he is a lawyer, he will almost surely have some clients who are affected by state law and regulations. If he is a

doctor, both his patients and his working facilities will probably be affected by both state and federal law. If he is in commerce, his business is vitally affected by taxation and possibly by planning, zoning and other environmental legislation. If he is a teacher, he is affected directly by state policies and budgets. If he is employed by any private business, he is dependent upon the willingness of his employer to grant him leave to serve in the General Assembly. In short, every legislator has, by reason of his status as a part-time state official, a particular economic situation which may reasonably be expected to influence his ideas as to what state policy should be.

One obvious solution to the conflict-of-interest problem would be to make legislators full-time officers. Quite aside from the really significant increase in costs which this would impose upon the State, a move to full-time professional state legislators, as distinguished from the present part-time "citizen" legislator, involves profound questions as to the nature and function of the legislative branch of state government -- questions which should be explored and considered on their own merits rather than as by-products of a solution to another type of problem. Accordingly, the Commission has dismissed this solution.

Various ethics statutes have dealt with the conflict-of-interest problem in various ways. Prominent among the solutions are disclosure provisions. These provisions require

each legislator, either by general statement of his financial interests or by specific statement when occasion demands, to make public any special interest which he may have in specific bills or types of bills. Other provisions limit or prohibit legislator representation of clients before state regulatory agencies. Still other provisions prohibit actions, such as acceptance of employment or gifts which are intended to, or may have a tendency to, affect the legislator's vote or other official action. These last provisions suffer from either self-defeating vagueness or undesirable narrowness of language.

III

The Commission has not found reason to conclude that any of the various types of ethics statutes have had the effect of measurably improving the ethical level of various legislatures to which the statutes apply. Some reports indicate that provisions requiring disclosure of certain types of financial interest which would not normally come to light from knowledge of the day-to-day business and activities of the legislator may have merit. The opposing argument is that detailed disclosure provisions constitute such an invasion of the privacy of the individual that they may discourage qualified persons from seeking legislative office.

Most individuals run for legislative office because they feel that some idea or philosophy which they espouse would best serve the State. The legislature in a democratic political

society develops acceptable public policy through the processes of compromise, persuasion and adjustment among persons of varying backgrounds, ideas and needs. Many legislators are, in effect, "lobbyists" for their particular points of view, and their purpose in seeking election was to perform this function.

Until the evidence in support of a particular type of legislative-ethics statute is stronger than it now appears, the Commission is of the opinion that the elective process is the best protection which the public has against abuse by a legislator who by his votes and activities clearly works for a selfish private interest and against the clear public interest. The election campaign occurs every two years. Charges that a legislator has allowed private interest to outweigh the public interest can, and in the light of past experience will, be made against incumbents. Properly presented, these charges present an issue not as to the honesty or integrity of the legislator, but as to his suitability for the office of legislator --- Does he represent too narrow a segment of the electorate?

We think this question is the type which the frequent popular election is designed to deal with effectively. It is the better part of wisdom to leave to the people the duty to inquire as to the suitability of a candidate for legislative office, rather than to trust to statutory regulation to prevent the legislator from reflecting views which flow naturally and honestly from his background.

It follows from the preceding statements that the Legislative Research Commission at this time recommends that no legislation seeking to regulate legislative ethics be enacted by the General Assembly of North Carolina. The Commission does not suggest that there is no room for improvement in the ethical quality of legislators and the legislative process. It hardly needs stating that the ability of the State to meet its responsibilities is greatly impaired or destroyed if the branch of State government which makes the ultimate decisions as to State policy is corrupt. The issue, then, is not as to the need for ethical legislators; it is, rather, how best to assure that legislators are ethical.

Many persons view governmental officers in general, and legislators in particular, with a cynical eye. If an ethics statute is enacted, it will surely receive considerable publicity. Then, if the public can see no effective results flowing from the statute, this cynicism will simply increase. An ineffective statute is far worse than no statute at all. As we have already stated, until the General Assembly can move with more assurance than we feel is warranted by existing evidence as to suggested statutory provisions, we feel that no legislative-ethics statute should be enacted.

We do not suggest that the search for means of improvement in the ethical quality of legislators be abandoned. Rather, we urge that any positive steps toward the desirable end be taken only after the most careful study and reflection give cause to believe that any proposed step will in fact produce a desired result.

We have already stated our belief that the electorate can act to judge candidates against their respective backgrounds and performances. In addition to this safeguard, the legislature can judge its internal activities and procedures and maintain a constant study to discover workable means to discourage unethical behavior on the part of its members. We suggest that this continuing study can best be made by legislators familiar with the machinery of the legislature--the Committees on Rules and Operation of each of the houses of the General Assembly. Accordingly, we recommend that the rules of each house be amended by adding thereto a provision that members of the General Assembly and of the public be invited to bring to the attention of the Rules Committees both incidents and practices which are deemed to indicate or encourage behavior which is of questionable ethical quality. At some time near the end of each session, the two Rules Committees should meet jointly and discuss the types of behavior and incidents involved and make a report to be transmitted to their successors. At such time as the Rules Committees conclude that a particular problem is grave, and that a particular solution is appropriate the Committees could then submit bills or rules changes to deal effectively with the matter.

REPORT OF THE LEGISLATIVE RESEARCH COMMISSION

TO THE 1971 GENERAL ASSEMBLY

REPORTING VIOLENT WOUNDS

Raleigh, North Carolina

November 13, 1970

Introduction

Because of the possibility of increasing the means for detecting violent crimes and apprehending assailants, the Legislative Research Commission was requested to consider a proposal for a violent wound reporting law. North Carolina at the present time has no such requirement either by statute or at common law.

The law in other jurisdictions

Nineteen states and the District of Columbia have specific statutes requiring at a minimum the reporting by physicians of gunshot wounds. Reporting is required "immediately" or "at once" in 15 statutes; "at once but not later than twelve hours" in 1 statute; "as soon as practicable" or "possible" in 3 statutes; and no time is specified in 1 statute. Six statutes allow the report to be either by telephone or written or require it to be both written and by telephone; the other statutes do not specify the means of reporting. Eight statutes relate only to gunshot and firearm wounds. All such statutes require a report to include at least the name of the injured person, address, and the character of the wound. "Other facts which may be of assistance to the police" are required in four statutes.

In the commentaries, the question has been raised as to whether a violent wound reporting statute, regardless of how drawn, is enforceable against an alleged violator. The issue is unconstitutional vagueness. Also, the statute may be in violation of the injured person's constitutional right of privacy and the right against self-incrimination. Whether waiver of one's constitutional right as a precondition to treatment outweighs the state's admittedly valid interest is an unanswered question. Nevertheless,

no reported cases were found which challenged the validity of the violent wounds reporting laws in other states.

The law in North Carolina

Current N.C. laws requiring medical reports include the reporting of cancer, drug abuse, communicable diseases to the State Board of Health (G.S. 90-111.3; G.S. 130-81, -83, -95, and -184), reports of addicts to the Department of Motor Vehicles (G.S. 20-17), the child abuse permissive reporting and immunity law (G.S. 14-318.2), and of course the Medical Examiner law (requiring the reporting to the local medical examiner of all deaths occurring under suspicious or unnatural circumstances). The doctor-patient confidential communications law (G.S. 8-53 under which a judge can compel a physician to testify over the patient's objections) relates only to admissibility of evidence in court, and not to release of information in other situations.

There is no gunshot-wound reporting law, nor rape reporting law, nor even a rape publicity restriction law. There does not seem to be any common law duty in this state to report suspicious wounds to law enforcement officials, nor does the criminal offense of "accessory after the fact" apply to the usual medical or hospital situation. In State v. Potter, 221 N.C. 153, 19 S.E. 2d 257 (1942), the North Carolina court makes it clear that the "accessory" offense includes the element of intentionally and personally "enabling a felon to escape detection, arrest, or the like." It does not require reporting possible offenses to the police.

In fact, the absence of a required reporting law creates a policy against such reporting. If a physician does report, law suits can be brought by patients relating to breach of contract (of confidentiality), libel and slander (applicable only where falsities occur) or invasion of

privacy. All of these causes of action support the duty of a doctor or hospital not to reveal information about patients, unless the patients authorize or permit release by oral or written or implied consent. In addition, a physician's license might in a particular case be revoked or suspended for a breach of the physician-patient relationship (G.S. 90-14).

Conclusion

Even in the absence of statute, routine procedures for informing the police can be worked out on the basis of obtaining the consent of the patient to do so. A simple procedure would be to inform any patient with a suspicious wound (or someone who can speak for him) that the case will be reported to the proper authorities unless the patient, or his agent, otherwise objects. This could be adopted as standard practice by the emergency room admitting clerk and entered into the patient's record. Of course, to be safe from later disputation by the patient (or his attorney) a signed statement or recording would be better.

This is a hard question of balancing public versus private interest. The public hospital and private physician can often get into a moral dilemma over it. Therefore, the Commission recommends that a Violent Wound Reporting Law be enacted by the 1971 General Assembly. A draft of the proposed bill accompanies this report.

A BILL TO BE ENTITLED AN ACT TO REQUIRE PHYSICIANS TO REPORT VIOLENT WOUNDS TO LAW ENFORCEMENT OFFICIALS.

The General Assembly of North Carolina do enact:

Section 1. Whenever any physician is attending professionally any person known to be or suspected of being injured by any act of violence probably caused by another person, he shall promptly report the name of the injured person and the nature of the injury to a law enforcement official. Any physician making such a report in good faith shall be immune from any civil or criminal liability for making the report. Violation of this provision shall upon conviction be a misdemeanor.

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall become effective upon ratification.